



PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

915-007.075

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

on November 19, 2008

Signature

Typed or printed

name Kathleen Sipos

Application Number

10/785,423

Filed

Feb. 23, 2004

First Named Inventor

H. FLECK et al.

Art Unit

2618

Examiner

Janelle N. YOUNG

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

applicant/inventor.

Signature

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

Keith R. Obert

Typed or printed name

attorney or agent of record.

Registration number _____.

203-261-1234

Telephone number

attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 58,051

November 19, 2008

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

*Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.



PATENT
Attorney Docket No. 915-007.075

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application Of:

H. FLECK et al. : Confirmation No.: **8579**
Application Serial No.: **10/785,423** : Group/Art Unit: **2618**
Filing Date: **February 23, 2004** : Examiner: **Janelle N. YOUNG**
Title: *Automated Data Migration*

Commissioner of Patents
Mail Stop AF
P.O. Box 1450
Alexandria, VA 22313-1450

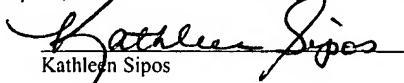
PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

In response to the final Office Action of August 19, 2008, please reconsider the rejections in view of the following remarks:

CERTIFICATE OF MAILING

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Kathleen Sipos
Dated: November 19, 2008

REMARKS

Claims 22-31 and 33-51 were examined by the Office, and in the final Office Action of August 19, 2008 all claims are rejected. With this response no claims are amended, added or cancelled. Applicant respectfully requests reconsideration and withdrawal of the objections and rejections in view of the following discussion. This response is submitted along with a Notice of Appeal.

Claim Rejections Under § 112

In section 2, on page 3 of the Office Action, claims 22 and 39-51 are rejected under 35 U.S.C. § 112, first paragraph as failing to comply with the written description requirement. The Office asserts that the specification fails to describe the term “user data” recited in the rejected claims. The subject matter of the claim need not be described literally i.e., using the same terms, in order for the disclosure to satisfy the description requirement. See MPEP § 2163.02. Page 10, line 27—page 11, line 21 discusses enabling users to select data which they want to download. Furthermore, page 14, lines 21-27 states that the destination and source communication devices include a user database, and data is transferred between the destination and source communication devices. Therefore, contrary to the assertions of the Office, one of skill in the art would understand that the data being referred to in the specification may include user data.

Claim Rejections Under § 103

In section 3, on page 3 of the Office Action, claims 22-31 and 33-51 are rejected under 35 U.S.C. § 103(a) as unpatentable over Frouin (U.S. Patent No. 6,891,797) in view of Parry et al. (U.S. Appl. Publ. No. 2003/0179112). Applicant respectfully submits that claim 22 is not disclosed or suggested by the cited references, because the cited references fail to disclose or suggest all of the limitations recited in claim 22. The cited references at least fail to disclose or suggest transferring a data collector from the destination communication device to the source communication device, wherein the data collector is programmed to collect user data on the source communication device, and the data collector is executed in the source communication device for collecting user data.

According to the invention, as recited in claim 22 for example, the data collector is a program to collect user data, which is executed in the source communication device for collecting the user data. Claim 22 specifically recites that the data collector is programmed to collect user data on the source communication device, and that the data collector is executed in the source communication device for collecting user data.

In contrast to claim 22, Frouin discloses an asynchronous packet switching network with low implementation cost with regard to a switch. The transfer of a packet through a switch takes

place as soon as the switch has knowledge of the switching information of the packet data without awaiting complete reception of all the packet data. See Frouin column 3, lines 20-31. Frouin discloses transferring the management of resources associated with a service guarantee required by a traffic type to a source communication device. See Frouin column 7, line 59—column 8, line 21. The transfer of resources is to provide a communication for each item of information to be transmitted in connect mode, an operation of reserving a path on the network, and then an operation of transmitting the information in connected mode on the reserved path. For each item of information to be transmitted in non-connected mode, an operation of estimating the availability of the path on the network is performed, and if the path is deemed to be available for transmission of the information, the information is transmitted on the path. Therefore, contrary to the assertions of the Office, Frouin does not disclose or suggest transferring a data collector from a destination communication device to a source communication device, as recited in claim 22, because Frouin only discloses the transfer of resources.

Furthermore, Frouin discloses that a source communication device can request a connection by transmitting to each communication devices on the path a request to establish a connection. See Frouin column 13, line 58—column 14, line 19. When it is possible to establish the connection, a connection acceptance is transmitted to the source communication device. The source communication device may then broadcast an item of information representing establish of the connection. See Frouin Figure 3. Therefore, Frouin only discloses sending a connection request, and receiving a connection acceptance, but does not disclose or suggest transferring a data collector programmed to collect user data on the source communication device, as recited in claim 22. In addition, Frouin also discloses sending an item of information representing the impossibility of setting up a connection to the destination communication device. See Frouin column 14, lines 62-67. However, this item of information is not a data collector as in claim 22.

It appears that the Office asserts that the messages discussed in Frouin, which are items of information, that are transferred between the source and destination communication device correspond to the data collector recited in claim 22. Claim 22 recites that the data collector is transferred from a destination communication device to the source communication device. However, the data collector recited in claim 22 is defined as being programmed to collect user data on the source communication device. There is no disclosure or suggestion in Frouin that the message can be programmed to be executed on the source communication device to collect user data. Instead, an item of information, i.e. a message, cannot be a data collector to be executed in the source communication device for collecting user data, because a message cannot be executed. A message can only be received within the source communication device and initiate execution of

another program. However, the message itself cannot be executed, nor can the message collect user data.

Furthermore, Frouin fails to disclose or suggest whether user data is sent from the source communication device to the destination communication device. Instead, Frouin only discloses transferring messages for setting up a communication path, and then transferring data packets over the communication path. However, Frouin is silent as to whether these data packets are user data as recited in claim 22. Parry fails to make up for the deficiencies in the teachings of Frouin, and therefore the cited references, alone or in combination, fail to disclose or suggest all of the limitations of claim 22.

Claims 23-38 ultimately depend from claim 22, and therefore are not disclosed or suggested by the cited references at least in view of their dependencies.

In addition, as for claim 23, the Office asserts that the features of claim 23 would be known from col. 10, l. 37-55 of Frouin. From col. 10, l. 37-55, however, there is only known to use signalling means which allow exchanges during the establishment phase. This is done by means of specific format messages. Specific format messages, however, do not require a migration tool migrating transferred data into the destination communication device. The messages do have a specific format according to Frouin and therefore, a migration tool is void. As for claim 24, the Office asserts that a connected mode and a non-connected mode would be a wired or a wireless connection. However, the Office fails to understand that the OSI reference model provides for connected and non-connected communication. In connected communication, a path is dedicated for this communication, and in non-connected communication, there is no dedicated path between the communication partners. However, connected and non-connected modes do not read onto wired or wireless connections. These types of connections use connected or non-connected modes, but they are not these modes as such. As for claim 26, Frouin does not teach that the data collector translates the collected data into the standard data format. As has been mentioned above, the data collector in the understanding of the Office is a message. A message is not capable of translating anything. Moreover, from the citation in col. 10, l. 37-55, Frouin only teaches to use specific format messages. However, translating collected data into the standard data format is something different than using specific format messages. Therefore, Frouin fails to teach the features of claim 26. As for claim 27 the Office cites col. 20, l. 44-57, and col. 27, l. 58- col. 28, l. 55. However, in these lines, there is nowhere disclosed that the source communication devices are identified. In col. 20 it is only disclosed that certain messages are exchanged between the source communication device and the destination communication device. In col. 27-col. 28, the type of messages are illustrated, however, none of the illustrated messages identifies the source communication device. As for claim

29, it is noted that after identifying the source communication device, compatibility between the source communication device and at least one provided data collector is checked. Checking compatibility is not disclosed in Frouin. The citation of the Office fails to teach that the data collector needs to be compatible and that this compatibility is checked. The messages are used, according to col. 10, l. 41, in a specific format messages. For these messages, there is no check for compatibility necessary. As for claim 30, col. 13, l. 28-38, and col. 15, l. 22-27 fail to teach loading a compatible data collector onto the destination communication device. In contrast, Frouin teaches to determine the availability of each link or of each path in the network, using a load table representing loads on links. This, however, is not loading a compatible data collector onto the destination communication device according to the invention. As for claim 37, col. 15, l. 54- col. 16, l. 28 fail to teach that the data collector collects available data types within the source communication device and that from the available data types a user can select the ones, he wants to collect from the source communication device. The citation on col. 15-16 does only teach that a transmission path can be setup using the items of information requesting the connection and confirming the establishment of connection.

Independent claims 39-51 contain limitations similar to those recited in claim 22, and therefore for at least the reasons discussed above in relation to claim 22 are not disclosed or suggested by the cited references.

Conclusion

For at least the foregoing reasons, it is respectfully submitted that the present application as is in condition for allowance, and such action is earnestly solicited. The undersigned hereby authorizes the Commissioner to charge Deposit Account No. 23-0442 for any fee deficiency required to submit this response.

Respectfully submitted,



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Dated: 19 November 2008

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